

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. Examiner's amendment is based upon the conclusion and decision from BPAI Decision – Examiner Affirmed in Part dated 7/02/2010. It stated that “

CONCLUSION :

The decision of the Examiner rejecting claims 1-3, 8-10, 13, 14, 17, and 18 under U.S.C. § 102(e) as being anticipated by Larsson, and rejecting claims 4-7, 15, 16, 19, and 20 under U.S.C. § 103(a) as being unpatentable over Larsson and Bark, is reversed. The decision of the Examiner rejecting claims 1-3, 8-10, 13, 14, 17, and 18 under U.S.C. § 103(a) as being unpatentable over Larsson and Yao is affirmed.

DECISION:

The Examiner's rejection of claims 4-7, 15, 16, 19 and 20 before us on appeal is REVERSED and the Examiner's rejection of claims 1-3, 8-10, 13, 14, 17, and 18 before us on appeal is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv). “

3. Authorization for this examiner's amendment was given in a telephone interview with Mr. Kam T. Tam on 7/07/2010, 7/12/2010, respectively.

4. The claims 1 – 20 for the application have been amended as following:

1. (Canceled)
2. (Canceled)
3. (Canceled)

4. (Currently Amended) 4. (Previously Presented). The method of claim 1, A method to determine a next data rate in a mobile station of a wireless system, comprising: receiving a congestion indicator from a base station, the congestion

indicator includes at least one data bit; and generating the next data rate in the mobile station as a function of the data rate history and the history of the congestion indicator of the mobile station; wherein generating the next data rate further comprises: counting a number of consecutive same value congestion indicators; and if the number of consecutive same value congestion indicators is less than a predetermined maximum number, determining the next data rate by maintaining the at least one previous data rate.

5. (Previously Presented) The method as in claim 4, wherein generating the next data rate further comprises:

if the number of consecutive same value congestion indicators is equal to or greater than the maximum number, determining the next data rate by adjusting the at least one previous data rate.

6. (Previously Presented) The method as in claim 5, wherein for a first congestion condition if the previous data rate is greater than the target data rate, adjusting comprises decreasing.

7. (Previously Presented) The method as in claim 6, wherein for a second congestion condition if the previous data rate is less than the target data rate, adjusting comprises increasing.

8. (Canceled)

9. (Canceled)

10. (Canceled)

11. (Canceled)

12. (Canceled)

13. (Canceled)

14. (Canceled)

15. (Currently Amended) 15. (Previously Presented) The apparatus as in claim 13, further comprising: A mobile station apparatus, comprising; means for receiving a congestion indicator and determining a congestion condition therefrom, the congestion indicator being received from a base station and includes at least one data bit; and data rate control means for determining a next

data rate for the mobile station as a function of the history of the congestion indicator and the data rate history of the mobile station; counting means for counting a number of consecutive same value congestion indicators, wherein the data rate control means generates the next data rate by maintaining the previous data rate in response to a second result of comparing the previous data rate to the target data rate when the number of consecutive same value control indicators is less than a maximum number.

17. (Canceled)
18. (Canceled)
19. (Currently Amended) ~~(New) The apparatus as in claim 18 further comprising~~ An apparatus for determining a next data rate of an access terminal, comprising:
 - a receive circuit for receiving a congestion indicator having at least one data bit from an access network; and
 - a data rate adjustment circuit coupled to the receive circuit, the data rate adjustment circuit being configured to generate the next data rate in the access terminal as a function of the data rate history and the history of the congestion indicator of the access terminal;
 - a comparator configured to compare a previous data rate to a target data rate for the access terminal, the comparator being coupled to the data rate adjustment circuit, wherein the data rate adjustment circuit being configured to generate the next data rate by adjusting the previous data rate in response to a result of comparing the previous data rate to the target rate; and
 - a counter configured to count the number of consecutive same value congestion indicators, wherein the data rate adjustment circuit being configured to generate the next data rate by maintaining the previous data rate in response to the result of comparing the previous data rate to the target rate when the number of consecutive same value congestion indicators is less than a predetermined number.

20. (Previously Presented) The apparatus as in claim 19 wherein the data rate adjustment circuit being configured to generate the next data rate by adjusting the previous data rate when the number of consecutive same value congestion indicators is equal to or greater than the predetermined number.

Allowable Subject Matter

5. Claims 4, 5, 6, 7, 15, 16, 19, 20 are allowed.

6. The following is an examiner's statement of reasons for allowance:

The prior arts made of record, in single or in combination, do not disclose explicitly the claims' limitations as decided by the Board of Patent Appeals and Interferences (BPAI) for the claims 4-7, 15, 16, 19 and 20.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew C. Lee whose telephone number is (571)272-3131. The examiner can normally be reached on Monday through Friday from 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on (571) 272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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<4Q10:7_13_2010>

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